

House File 2606 - Introduced

HOUSE FILE _____
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HSB 699)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of transactions involving
2 grain, by providing for the regulation of grain dealers and
3 warehouse operators, and providing for the administration of
4 the grain indemnity fund.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TL5B 6074HV 82
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1 1 Section 1. Section 203.1, subsection 7, Code Supplement
1 2 2007, is amended to read as follows:
1 3 7. "Financial institution" means ~~a~~ any of the following:
1 4 a. A bank or savings and loan association authorized by
1 5 the laws of this state, any other state, of Iowa or by the
~~1 6 laws of the United States, which is a member of the federal~~
~~1 7 deposit insurance corporation or the federal savings and loan~~
~~1 8 insurance corporation, respectively; or the national.~~
1 9 b. A bank for cooperatives established in the Agricultural
~~1 10 Credit Act, Pub. L. No. 100-233 or association chartered by~~
~~1 11 the farm credit system under the federal Farm Credit Act, as~~
1 12 amended, 12 U.S.C. ch. 23.

1 13 Sec. 2. Section 203.1, Code Supplement 2007, is amended by
1 14 adding the following new subsection:

1 15 NEW SUBSECTION. 14. "Warehouse operator" means the same
1 16 as defined in section 203C.1.

1 17 Sec. 3. Section 203.3, subsection 4, paragraph b,
1 18 unnumbered paragraph 1, Code 2007, is amended to read as
1 19 follows:

1 20 The grain dealer shall submit, as required by the
1 21 department, a financial statement that is accompanied by an
1 22 unqualified opinion based upon an audit performed by a
1 23 certified public accountant licensed in this state. However,
1 24 the department may accept a qualification in an opinion that
1 25 is unavoidable by any audit procedure that is permitted under
1 26 generally accepted accounting principles. An opinion that is
1 27 qualified because of a limited audit procedure or because the
1 28 scope of an audit is limited shall not be accepted by the
1 29 department. The department shall not require that a grain
1 30 dealer submit more than one such unqualified opinion per year.
1 31 The grain dealer, except as provided in section 203.15, may
1 32 elect to submit a financial statement that is accompanied by
1 33 the report of a certified public accountant licensed in this
1 34 state that is based upon a review performed by the certified
1 35 public accountant in lieu of the audited financial statement
2 1 specified in this paragraph. However, at any time the
2 2 department may require a financial statement that is
2 3 accompanied by the report of a certified public accountant
2 4 licensed in this state that is based upon a review performed
2 5 by a certified public accountant if the department has good
2 6 cause. A grain dealer shall submit financial statements to
~~2 7 the department in addition to those required in this paragraph~~
~~2 8 if the department determines that it is necessary to verify~~
~~2 9 the grain dealer's financial status or compliance with this~~
2 10 subsection.

2 11 Sec. 4. Section 203.3, subsection 5, paragraph b,
2 12 unnumbered paragraph 1, Code 2007, is amended to read as
2 13 follows:

2 14 The grain dealer shall submit, as required by the
2 15 department, a financial statement that is accompanied by an
2 16 unqualified opinion based upon an audit performed by a

2 17 certified public accountant licensed in this state. However,
2 18 the department may accept a qualification in an opinion that
2 19 is unavoidable by any audit procedure that is permitted under
2 20 generally accepted accounting principles. An opinion that is
2 21 qualified because of a limited audit procedure or because the
2 22 scope of an audit is limited shall not be accepted by the
2 23 department. The department shall not require that a grain
2 24 dealer submit more than one such unqualified opinion per year.
2 25 The grain dealer may elect, however, to submit a financial
2 26 statement that is accompanied by the report of a certified
2 27 public accountant licensed in this state that is based upon a
2 28 review performed by the certified public accountant in lieu of
2 29 the audited financial statement specified in this paragraph.
2 30 However, at any time the department may require a financial
2 31 statement that is accompanied by the report of a certified
2 32 public accountant licensed in this state that is based upon a
2 33 review performed by a certified public accountant if the
2 34 department has good cause. A grain dealer shall submit
2 35 financial statements to the department in addition to those

3 1 required in this paragraph if the department determines that
3 2 it is necessary to verify the grain dealer's financial status
3 3 or compliance with this section.

3 4 Sec. 5. Section 203.11B, subsection 4, paragraph d, Code
3 5 2007, is amended to read as follows:

3 6 d. The findings and recommendations of the panel shall be
3 7 included in a response delivered to the department and the
3 8 person subject to the civil penalty. The response may include
3 9 a recommendation that a proposed civil penalty be modified or
3 10 suspended, that an alternative method of collection be
3 11 instituted, or that conditions be placed upon the license of a
3 12 grain dealer as provided in section 203.3 or the license of a
3 13 warehouse operator as provided in section 203C.6.

3 14 Sec. 6. Section 203.15, subsection 4, paragraph b, Code
3 15 2007, is amended to read as follows:

~~3 16 b. A grain dealer holding a federal or state warehouse~~
~~3 17 license who is also a warehouse operator licensed by the~~
~~3 18 department under chapter 203C or the United States department~~
~~3 19 of agriculture under the United States Warehouse Act, 7 U.S.C.~~
~~3 20 241 et seq., and who does not have a sufficient quantity or~~
3 21 quality of grain to satisfy the warehouse operator's
3 22 obligations based on an examination by the department or the
3 23 United States department of agriculture shall not purchase
3 24 grain on credit-sale contract to correct the shortage of
3 25 grain.

3 26 Sec. 7. Section 203.15, subsection 5, paragraphs a and b,
3 27 Code 2007, are amended to read as follows:

~~3 28 a. The grain dealer holding a federal or state warehouse~~
~~3 29 license who is also a warehouse operator licensed by the~~
~~3 30 department under chapter 203C or the United States department~~
~~3 31 of agriculture under the United States Warehouse Act, 7 U.S.C.~~
~~3 32 241 et seq.,~~ does not have a sufficient quantity or quality of
3 33 grain to satisfy the warehouse operator's obligations based on
3 34 an examination by the department or the United States
3 35 department of agriculture.

~~4 1 b. The grain dealer holding a state or federal warehouse~~
~~4 2 license who is also a warehouse operator licensed by the~~
~~4 3 department under chapter 203C or the United States department~~
~~4 4 of agriculture under the United States Warehouse Act, 7 U.S.C.~~
~~4 5 241 et seq.,~~ issues back to the grain dealer a warehouse
4 6 receipt for purposes of providing collateral, if the grain
4 7 which is the subject of the warehouse receipt was purchased on
4 8 credit and is unpaid for by the grain dealer.

4 9 Sec. 8. Section 203.17, Code 2007, is amended to read as
4 10 follows:

4 11 203.17 ~~STANDARDIZATION OF RECORDS AND DOCUMENTS AND~~
4 12 ~~RECORDS.~~

4 13 1. The department may adopt rules specifying the form,
4 14 content, ~~and~~ use, and maintenance of documents issued by a
4 15 grain dealer under this chapter including but not limited to
4 16 scale tickets, settlement sheets, daily position records, and
4 17 credit-sale contracts. The department may adopt rules for
4 18 both printed and electronic documents, including rules for the
4 19 transmission, receipt, authentication, and archiving of
4 20 electronically generated or stored documents.

4 21 2. All scale ticket forms in the possession of a grain
4 22 dealer shall have been permanently and consecutively numbered
4 23 at the time of printing. A grain dealer shall maintain an
4 24 accurate record of all scale ticket numbers. The record shall
4 25 include the disposition of each numbered form, whether issued,
4 26 destroyed, or otherwise disposed of.

4 27 Sec. 9. Section 203C.1, subsection 9, Code 2007, is

4 28 amended by striking the subsection and inserting in lieu
4 29 thereof the following:

4 30 9. "Financial institution" means the same as defined in
4 31 section 203.1.

4 32 Sec. 10. Section 203C.5, Code 2007, is amended to read as
4 33 follows:

4 34 203C.5 RULES == DOCUMENTS AND FORMS.

4 35 1. The department shall adopt rules as it deems necessary
5 1 for the efficient administration of this chapter, and may
5 2 designate an employee or officer of the department to act for
5 3 the department in any details connected with administration,
5 4 including the issuance of licenses and approval of deficiency
5 5 bonds or irrevocable letters of credit in the name of the
5 6 department, but not including matters requiring a public
5 7 hearing or suspension or revocation of licenses.

5 8 2. a. The department may adopt rules specifying the form,
5 9 content, and use of documents issued by a warehouse operator
5 10 under this chapter including but not limited to scale tickets,
5 11 warehouse receipts, settlement sheets, and daily position
5 12 records, shipping ledgers, and other documents used by
5 13 licensed warehouses. The department may adopt rules for both
5 14 printed and electronic documents, including rules for the
5 15 transmission, receipt, authentication, and archiving of
5 16 electronically generated or stored documents.

5 17 b. All scale ticket forms and warehouse receipt forms in
5 18 the possession of a warehouse operator shall have been
5 19 permanently and consecutively numbered at the time of
5 20 printing. A warehouse operator shall maintain an accurate
5 21 record of the numbers of these documents. The record shall
5 22 include the disposition of each form, whether issued,
5 23 destroyed, or otherwise disposed of. The department may by
5 24 rule require this use of prenumbered forms and recording for
5 25 documents other than scale tickets and warehouse receipts.

5 26 Sec. 11. Section 203C.6, subsection 4, paragraph b, Code
5 27 Supplement 2007, is amended to read as follows:

5 28 b. The warehouse operator shall submit, as required by the
5 29 department, a financial statement that is accompanied by an
5 30 unqualified opinion based upon an audit performed by a
5 31 certified public accountant licensed in this state. However,
5 32 the department may accept a qualification in an opinion that
5 33 is unavoidable by any audit procedure that is permitted under
5 34 generally accepted accounting principles. An opinion that is
5 35 qualified because of a limited audit procedure or because the
6 1 scope of an audit is limited shall not be accepted by the
6 2 department. The department shall not require that a warehouse
6 3 operator submit more than one such unqualified opinion per
6 4 year. The warehouse operator may elect, however, to submit a
6 5 financial statement that is accompanied by the report of a
6 6 certified public accountant licensed in this state that is
6 7 based upon a review performed by the certified public
6 8 accountant in lieu of the audited financial statement
6 9 specified in this paragraph. However, at any time the
6 10 department may require a financial statement that is
6 11 accompanied by the report of a certified public accountant
6 12 licensed in this state that is based upon a review performed
6 13 by a certified public accountant if the department has good
6 14 cause. A warehouse operator shall submit financial statements
6 15 to the department in addition to those required in this
6 16 paragraph if the department determines that it is necessary to
6 17 verify the warehouse operator's financial status or compliance
6 18 with this subsection.

6 19 Sec. 12. Section 203C.6, subsection 5, paragraph b, Code
6 20 Supplement 2007, is amended to read as follows:

6 21 b. The warehouse operator shall submit, as required by the
6 22 department, a financial statement that is accompanied by an
6 23 unqualified opinion based upon an audit performed by a
6 24 certified public accountant licensed in this state. However,
6 25 the department may accept a qualification in an opinion that
6 26 is unavoidable by any audit procedure that is permitted under
6 27 generally accepted accounting principles. An opinion that is
6 28 qualified because of a limited audit procedure or because the
6 29 scope of an audit is limited shall not be accepted by the
6 30 department. The department shall not require that a warehouse
6 31 operator submit more than one such unqualified opinion per
6 32 year. The warehouse operator may elect, however, to submit a
6 33 financial statement that is accompanied by the report of a
6 34 certified public accountant licensed in this state that is
6 35 based upon a review performed by the certified public
7 1 accountant in lieu of the audited financial statement
7 2 specified in this paragraph. However, at any time the
7 3 department may require a financial statement that is

7 4 accompanied by the report of a certified public accountant
7 5 licensed in this state that is based upon a review performed
7 6 by a certified public accountant if the department has good
7 7 cause. A warehouse operator shall submit financial statements
7 8 to the department in addition to those required in this
7 9 paragraph if the department determines that it is necessary to
7 10 verify the warehouse operator's financial status or compliance
7 11 with this subsection.

7 12 Sec. 13. Section 203D.1, subsections 3 and 9, Code 2007,
7 13 are amended to read as follows:

7 14 3. "Depositor" means a person who deposits grain in a
7 15 state licensed warehouse for storage, handling, or shipment,
7 16 or who is the owner or legal holder of an outstanding
7 17 warehouse receipt issued by a state licensed warehouse, or who
7 18 is lawfully entitled to possession of the grain.

7 19 9. "Seller" means a person who sells grain which the
7 20 person has produced or caused to be produced to a licensed
7 21 grain dealer, but excludes a person who executes a credit sale
7 22 contract as a seller as provided in section 203.15. However,
7 23 "seller" does not include a person licensed as a grain dealer
7 24 in any jurisdiction who sells grain to a licensed grain
7 25 dealer.

7 26 Sec. 14. Section 203D.1, Code 2007, is amended by adding
7 27 the following new subsection:

7 28 NEW SUBSECTION. 6A. "Licensed warehouse" means the same
7 29 as defined in section 203C.1.

7 30 Sec. 15. Section 203D.3, subsection 3, paragraph a,
7 31 subparagraph (3), unnumbered paragraph 1, Code 2007, is
7 32 amended to read as follows:

7 33 For licensed warehouse operators ~~or participating federally~~
7 34 ~~licensed grain warehouses~~ the following:

7 35 Sec. 16. Section 203D.4, subsection 1, Code 2007, is
8 1 amended to read as follows:

8 2 1. The Iowa grain indemnity fund board is established to
8 3 advise the department on matters relating to the fund and to
8 4 perform the duties provided it in this chapter. The board is
8 5 composed of the secretary of agriculture or a designee who
8 6 shall serve as president; the commissioner of insurance or a
8 7 designee who shall serve as secretary; the state treasurer or
8 8 a designee who shall serve as treasurer; and four
8 9 representatives of the grain industry appointed by the
8 10 governor, subject to confirmation by the senate, two of whom
8 11 shall be representatives of producers and who shall be
8 12 actively participating producers, and two of whom shall be
8 13 representatives of licensed grain dealers and licensed
8 14 warehouse operators and who shall be actively participating
8 15 licensed grain dealers and licensed warehouse operators, each
8 16 of whom shall be selected from a list of three nominations
8 17 made by the secretary of agriculture. The term of membership
8 18 of the grain industry representatives is three years, and the
8 19 representatives are eligible for reappointment. However, only
8 20 actively participating producers, and grain dealers and
8 21 warehouse operators are eligible for reappointment. The grain
8 22 industry representatives are entitled to a per diem as
8 23 specified in section 7E.6 for each day spent in the
8 24 performance of the duties of the board, plus actual expenses
8 25 incurred in the performance of those duties. Four members of
8 26 the board constitute a quorum, and the affirmative vote of
8 27 four members is necessary for any action taken by the board,
8 28 except that a lesser number may adjourn a meeting. A vacancy
8 29 in the membership of the board does not impair the rights of a
8 30 quorum to exercise all the rights and perform all the duties
8 31 of the board.

8 32 Sec. 17. Section 203D.6, subsection 1, paragraph b, Code
8 33 2007, is amended to read as follows:

8 34 b. The filing of a petition in bankruptcy by a licensed
8 35 grain dealer or licensed warehouse operator.

9 1 Sec. 18. Section 203D.6, subsection 3, paragraph d, Code
9 2 2007, is amended to read as follows:

9 3 d. That the claim derives from a covered transaction. For
9 4 purposes of this paragraph, a claim derives from a covered
9 5 transaction if the claimant is a seller who transferred title
9 6 to the grain to ~~the a~~ a licensed grain dealer other than by
9 7 credit sale contract within six months of the incurrence date,
9 8 or if the claimant is a depositor who delivered the grain to
9 9 ~~the a~~ a licensed warehouse operator.

9 10 Sec. 19. Section 203D.6, Code 2007, is amended by adding
9 11 the following new subsection:

9 12 NEW SUBSECTION. 9. TIME LIMITATION ON CLAIMS.

9 13 a. A claim shall expire if five years after the board
9 14 determines that the claim is eligible, the claimant has failed

9 15 to do any of the following:

9 16 (1) Provide for the fund's subrogation or has failed to
9 17 render all necessary assistance to aid the department and the
9 18 board in securing the department's rights of subrogation as
9 19 required in this section.

9 20 (2) Failed to provide necessary documentation or
9 21 information required by the board in order to process the
9 22 claim.

9 23 b. The fund shall not be liable for the payment of an
9 24 expired claim.

9 25 Sec. 20. TIME LIMITATIONS ON CURRENT CLAIMS.

9 26 1. Notwithstanding section 203D.6, subsection 9, as
9 27 enacted in this Act, a claim that the Iowa grain indemnity
9 28 fund board has determined is eligible on or before the
9 29 effective date of this Act, as provided in section 203D.6,
9 30 shall expire if five years after the effective date of this
9 31 Act, the claimant has failed to do any of the following:

9 32 a. Provide for the subrogation of the grain depositors and
9 33 sellers indemnity fund created in section 203D.3, or has
9 34 failed to render all necessary assistance to aid the
9 35 department of agriculture and land stewardship and the Iowa
10 1 grain indemnity fund board in securing the department's rights
10 2 of subrogation as required in section 203D.6.

10 3 b. Provide necessary documentation or information required
10 4 by the Iowa grain indemnity fund board in order to process the
10 5 claim.

10 6 2. The grain depositors and sellers indemnity fund created
10 7 in section 203D.3 shall not be liable for the payment of an
10 8 expired claim.

10 9 EXPLANATION

10 10 This bill amends a number of Code chapters relating to
10 11 grain transactions involving grain dealers and grain warehouse
10 12 operators licensed by the department of agriculture and land
10 13 stewardship. Code chapter 203 regulates grain dealers, Code
10 14 chapter 203C regulates warehouse operators, and Code chapter
10 15 203D provides for the grain indemnity fund and the payment of
10 16 claims to sellers and depositors.

10 17 FINANCIAL INSTITUTIONS. The bill amends provisions in Code
10 18 chapters 203 and 203C by modifying the definition of a
10 19 financial institution to include in-state and out-of-state
10 20 banks and savings and loan associations and replaces the
10 21 specific reference to the national bank for cooperatives with
10 22 any bank or association chartered by the federal farm credit
10 23 system. The Code chapters refer to financial institutions
10 24 when addressing requirements for issuing letters of credit and
10 25 for payment by electronic transfer.

10 26 FINANCIAL STATEMENTS. The bill amends several Code
10 27 sections providing for the licensure of grain dealers (class 1
10 28 or class 2) and warehouse operators (class 1 or class 2). The
10 29 bill authorizes the department to demand that a grain dealer
10 30 or warehouse operator submit financial statements to the
10 31 department as it determines necessary to verify the financial
10 32 status of the grain dealer or warehouse operator or compliance
10 33 with licensure requirements.

10 34 FEDERALLY LICENSED WAREHOUSES. The bill amends several
11 35 provisions in Code chapter 203 regulating credit sale
11 1 contracts which refer to federally licensed warehouses, by
11 2 citing the relevant federal statute, the United States
11 3 Warehouse Act. It also amends Code chapter 203D, by striking
11 4 an extraneous reference to operators of federal warehouses who
11 5 were allowed to participate in the fund.

11 6 ELECTRONIC DOCUMENTS. The bill authorizes the department
11 7 to adopt rules regarding electronic documents, including for
11 8 their transmission, receipt, authentication, and archiving.
11 9 For grain dealers, documents include scale tickets, settlement
11 10 sheets, daily position records, and credit-sale contracts, and
11 11 for warehouse operators documents include scale tickets,
11 12 warehouse receipts, settlement sheets, and daily position
11 13 records. The bill eliminates a reference to shipping ledgers.

11 14 LICENSURE TERMINOLOGY. The bill amends provisions in Code
11 15 chapter 203D to change the term "state warehouse" to "licensed
11 16 warehouse" to be compatible with provisions in Code chapter
11 17 203C regulating warehouses licensed by the department. Code
11 18 section 203D.2 provides that persons participating in the fund
11 19 are licensed grain dealers and licensed warehouse operators,
11 20 and the bill makes a number of corresponding changes to
11 21 provide that a grain dealer or warehouse operator means a
11 22 person who is licensed under Code chapter 203 or 203C. The
11 23 bill amends Code section 203D.4, establishing the Iowa grain
11 24 indemnity fund board, to require that members representing
11 25 grain dealers and warehouse operators be licensed.

11 26 TIME LIMIT ON CLAIMS FOR INDEMNIFICATION. The bill
11 27 provides for the expiration of claims for indemnification
11 28 which would otherwise be eligible to be paid. It provides for
11 29 a five-year limitation upon a claimant who fails to provide
11 30 for the subrogation of an indemnity claim or to provide
11 31 necessary documentation or information required to process the
11 32 claim. The bill provides that for persons with eligible
11 33 claims outstanding on the effective date of the bill, the
11 34 five-year limitation period commences on the effective date of
11 35 the bill.
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